

**Eligibility Guidelines for Water Quality Improvement and Resilient Infrastructure
Projects to be Funded by the York State Environmental Facilities Corporation
under the Water Infrastructure Improvement (“WIIA”) and Intermunicipal (“IMG”)
Grant Programs**

Response to Comments

On March 15, 2023, the Environmental Facilities Corporation (“EFC”) published Draft Eligibility Guidelines in the Environmental Notice Bulletin for a 30-day public comment period, which closed 5 p.m. April 14, 2023. EFC received 10 comments, which are summarized below, along with EFC’s responses.

COMMENT 1: Matthew Thogersen

Summary of Comment: Commenter states EFC should consider allocating a specific percentage of grant and principal forgiveness loans specifically for communities who have shovel ready "Critical Plant and Collection System Upgrades and Rehabilitation" projects at their plants and pump stations. This would be different from the grant programs that seem to be solely for new systems such as additional nutrient removals, UV, and/or projects to reduce or prevent SSOs.

EFC Reply: Both the CWSRF scoring system and WIIA/IMG evaluation criteria currently consider projects that will maintain or protect the integrity of existing wastewater treatment facilities to ensure continued SPDES permit compliance.

COMMENT 2: Claire Barnett, MBA, Executive Director - Healthy Schools Network

Summary of Comment: Commenter requests that EFC amend its draft so that K-12 public school districts are clearly identified as eligible, as they are throughout the Bond Act.

EFC Reply: Eligible water quality improvement project costs under this grant program include costs associated with projects authorized by the New York State Water Infrastructure Improvement Act of 2017. Public school systems are eligible to receive funding under this grant program because a "school district" is included in the definition of a "municipality" eligible to receive grant funding under WIIA. Accordingly, no amendment is necessary.

COMMENT 3: Katherine E. Bonelli, Chairwoman & Peter Tuohy, Chair - Orange County Legislature

Summary of Comment: Commenter requests the inclusion of Orange County’s proposed project to expand the treatment capacity of Harriman Sewer Treatment Plant and improve the sewer conveyance system.

EFC Reply: The proposed project, as described, is likely eligible for the Clean Water State Revolving Fund (“CWSRF”) assistance and as well as a WIIA grant. The County is encouraged to apply for each.

COMMENT 4: Shelby Wing, Town Supervisor – Town of Pittsfield

Summary of Comment: Commenter states their municipality, which is in Otsego County, does not have a municipal drinking water source but has wells and groundwater that need to be protected. Commenter states they need a salt storage shed to help protect runoff into streams and groundwater. Commenter would like to see provisions that would help a smaller rural town protect the waters from which they obtain the drinking water.

EFC Reply: This is not an eligible project for WIIA or IMG. An example of an eligible project would be if the Town were to propose creating a new water district to serve public water to residences with private wells contaminated by salt (or other contaminants). The construction of a salt storage shed is eligible for financing through the CWSRF program as a non-point source project.

COMMENT 5: Andrea Smyth – Rensselaer & Washington County (former New York State Senate Candidate - Senate District 43)

Summary of Comment: Commenter offered several recommendations to scoring criteria to ensure rural communities receive funding at equitable and effective levels.

EFC Reply: EFC and DOH’s WIIA/IMG evaluation criteria considers the following factors:

1. Water Quality Improvement (Clean Water), Public Health/System Dependability (Drinking Water);
2. Community Impact and Support;
3. Benefits to Environmental Justice or Disadvantaged Communities;
4. Financial Hardship;
5. Project Readiness; and
6. Multi-Community Benefits (Intermunicipal Grants).

EFC and DOH consider the evaluation criteria to be comprehensive and adequate to distribute available funding on a statewide basis while avoiding set asides based on population or other factors. Disadvantaged communities will receive no less than 35 percent of the benefit of the Bond Act funding.

EFC has funding available for emergency projects. Information may be found at <https://efc.ny.gov/emergency>.

EFC's Community Assistance Teams can assist small, rural and disadvantaged communities identify funding opportunities or provide technical support on a specified capital project. Information may be found at <https://efc.ny.gov/CAT>.

COMMENT 6: Kenneth Arnold, Commissioner of Public Works - Nassau County

Summary of Comment: Commenter states that the draft Eligibility Guidelines demonstrate commitment to accomplishing the Bond Act's goals and appear supportive of the County's priority projects. Commenter suggests ensuring eligibility of projects to convert aging septic systems to municipal sewers and projects that address inflow and infiltration; including protection and restoration of key ecosystems and habitat in the definition of water quality infrastructure; allowing exceptions for certain projects that began construction prior to October 1; and increasing or removing funding caps to facilitate implementation of transformative projects.

EFC Reply: EFC agrees that the WIIA/IMG eligibility guidelines support the Bond Act's commitment to protecting the resilience of New York State's water and wastewater infrastructure and the quality of the State's water. The following address the County's specific comments:

1. Pursuant to the statutes establishing the WIIA/IMG grant programs, projects eligible for funding from the programs include those for the construction of "sewage treatment works," which includes the construction or expansion of sewers to replace aging or failing septic systems.
2. An infrastructure project to upgrade or rehabilitate sewer systems to address inflow and infiltration into the system is an eligible project because it results in improvements to a sewage treatment works.
3. The criteria for evaluating clean water projects under the WIIA/IMG grant programs include consideration of the classification of the receiving water, its impairment for best use, and the potential for the sewage treatment works project to improve water quality of the receiving water body. This includes protection and restoration of ecosystems resulting from the project.
4. The purpose of the WIIA/IMG grant programs and the Bond Act is to support critical water infrastructure projects that may not be able to proceed absent additional funding. When the WIIA/IMG grant programs were initially established, EFC allowed municipalities that had already moved forward on their projects to compete for grant so as not to disadvantage those municipalities. Funding has been available through the WIIA/IMG grant programs for several years so opportunities have been available for

municipalities with projects already under construction to compete for grant.

5. Since the beginning of the WIIA/IMG programs, EFC and DOH have considered and revised the caps on grants to provide funding to larger, transformative projects, while also ensuring that funding remains for smaller projects that are critical for protection of the environment and public health in communities, especially small, rural, or disadvantaged communities that would be unable to undertake these projects without these grants.

COMMENT 7: Jerome Schad, Chair - Erie County Water Authority

Summary of Comment: Commenter states the guidelines should provide equal consideration to drinking water providers, like the Erie County Water Authority, a local public authority, that have demonstrated their ability to successfully run assessment management programs and improve their infrastructure absent circumstances that require consent orders.

EFC Reply: The criteria for evaluating WIIA/IMG grant applications include portions of the DWSRF scoring system, which prioritizes State sanitary code violations and public health hazards, but also factors in public health issues not associated with violations to help prioritize projects that are important or critical to public health but historically have not scored well under the DWSRF scoring system. Additional consideration of disadvantaged communities and project readiness is included in the overall WIIA/IMG score.

COMMENT 8: Kate Boicourt, Director - Climate Resilient Coasts and Watersheds, New York – New Jersey Environmental Defense Fund

Summary of Comment: Commenter suggests requiring projects be built to a standard that accommodates the official sea level rise projections and considers all climate hazards. Also, commenter requests that EFC develop evaluation criteria that explicitly considers and prioritizes projects that benefit environmental justice communities/nature-based infrastructure scope of work.

EFC Reply: To be considered for WIIA/IMG grant programs, the applicant must submit an engineering report for the proposed project developed in accordance with the applicable Engineering Report Outline. The outline requires consideration of green infrastructure and nature-based features for climate resiliency incorporating sea-level rise guidelines adopted pursuant to Climate Leadership and Community Protection Act.

Projects will be evaluated, in part, based on environmental justice considerations, and disadvantaged communities will receive no less than 35 percent of the benefit of the Bond Act funding.

COMMENT 9: Whiteman Osterman & Hanna LLP, on behalf of Kiryas Joel

Summary of Comment: Commenter recommends that the Guidance be modified to allow disadvantaged communities to be eligible for funding if the proposed project will assist many communities to combat emerging contaminants and lead to intermunicipal agreements among more than the sponsoring community.

EFC Reply: WIIA/IMG evaluation criteria consider benefits to disadvantaged communities and projects that address emerging contaminants are eligible for funding under the WIIA/IMG programs. The IMG program funds joint projects undertaken by two or more municipalities. Disadvantaged communities will receive no less than 35 percent of the benefit of the Bond Act funding.

COMMENT 10: Loncey Conyers, Sr., Senior Director for Expense, Miscellaneous Revenues and Federal & State Grants – NYC Environmental Protection

Summary of Comment: Commenter recommends increasing the funding cap associated with the WIIA/IMG programs.

EFC Reply: Since the beginning of the WIIA/IMG programs, EFC and DOH have considered and revised the caps on grants to provide funding to larger, transformative projects, while also ensuring that funding remains for smaller projects that are critical for protection of the environment and public health in communities, especially small, rural, or disadvantaged communities that would be unable to undertake these projects without these grants.